

JUL 28 2008

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

TIMOTHY W. MOSER,

Plaintiff - Appellee,

v.

ENCORE CAPITAL GROUP,
INCORPORATED, a Delaware
corporation CARL C. GREGORY, III, an
individual; BARRY BARKLEY, an
individual; BRANDON BLACK, an
individual,

Defendants - Appellants,

and

JEFFERIES & COMPANY, INC., a
Delaware corporation; BREEN MURRAY
& COMPANY, INCORPORATED, a
Delaware corporation; ROTH CAPITAL
PARTNERS, a California Limited
Liability Company ROBERT M. WHYTE,
an individual; ALEXANDER LEMON, D,
an individual; ERIC D. KOGAN, an
individual; BRIAN SCHORR, an
individual,

Defendants.

No. 06-55790

D.C. No. CV-04-02085-LAB/WC

MEMORANDUM^{*}

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

TIMOTHY W. MOSER,

Plaintiff - Appellee,

v.

ENCORE CAPITAL GROUP,
INCORPORATED, a Delaware
corporation CARL C. GREGORY, III, an
individual; BARRY BARKLEY, an
individual; BRANDON BLACK, an
individual; JEFFERIES COMPANY,
INC., a Delaware corporation; BREEN
MURRAY COMPANY,
INCORPORATED, a Delaware
corporation; ROTH CAPITAL
PARTNERS, a California Limited
Liability Company; ROBERT M.
WHYTE, an individual,

Defendants,

BRIAN SCHORR, an individual,

Defendant,

and

ALEXANDER LEMON, an individual;
ERIC D. KOGAN, an individual,

Defendants - Appellants.

No. 07-56399

D.C. No. CV-04-02085-LAB

TIMOTHY W. MOSER,

Plaintiff - Appellee,

v.

ENCORE CAPITAL GROUP,
INCORPORATED, a Delaware
corporation CARL C. GREGORY, III, an
individual; BARRY BARKLEY, an
individual; BRANDON BLACK, an
individual; JEFFERIES COMPANY,
INC., a Delaware corporation; BREEN
MURRAY COMPANY,
INCORPORATED, a Delaware
corporation; ROTH CAPITAL
PARTNERS, a California Limited
Liability Company; ROBERT M.
WHYTE, an individual; ALEXANDER
LEMOND, an individual; ERIC D.
KOGAN, an individual,

Defendants,

and

BRIAN SCHORR, an individual,

Defendant - Appellant.

No. 07-56404

D.C. No. CV-04-02085-LAB

Appeal from the United States District Court

for the Southern District of California
Larry A. Burns, District Judge, Presiding

Argued and Submitted July 17, 2008
Pasadena, California

Before: SILVERMAN, RAWLINSON, and M. SMITH, Circuit Judges.

Appellant Encore Capital Group and individual defendants appeal the district court's denial of their special motion to strike pursuant to California's anti-SLAPP law, Cal. Code Civ. Proc. § 425.16. Because the parties are familiar with the facts, we do not set them forth here. We have jurisdiction to hear this case under 28 U.S.C. § 1291. *Batzel v. Smith*, 333 F.3d 1018, 1024-25 (9th Cir. 2003).

We affirm. The filing of a registration statement with the Securities and Exchange Commission does not constitute a "writing made before" or "in connection with an issue under consideration or review by" an "official proceeding authorized by law" within the meaning of California Code of Civil Procedure § 425.16(e)(1) and (e)(2).¹

AFFIRMED.

¹ We do not consider whether it is a "writing made in connection with an issue under consideration or review" by an "executive . . . body," Cal. Code Civ. Proc. § 425.16(e)(2), because that argument was not presented in Appellant's opening brief, nor before the district court. *Indep. Towers of Wash. v. Wash.*, 350 F.3d 925, 929 (9th Cir. 2003).